



**Business Law Reform and
Alternative Dispute Resolution
Development**

Under the USAID/Madagascar Legal, Regulatory and
Judicial Reform Activity
USAID contract No. 623-C-00-98-00029-00

**MADAGASCAR PARTICIPATION & POVERTY (P&P) PROJECT
LEGAL, REGULATORY, JUDICIAL REFORM ACTIVITY**

October 1, 2000 – December 31, 2000

**Quarterly Performance Monitoring Report
(Tenth Quarter)**

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**MADAGASCAR PARTICIPATION & POVERTY (P&P) PROJECT
LEGAL, REGULATORY, JUDICIAL REFORM ACTIVITY**

**Commercial Law Reform and
Alternative Dispute Resolution Components
Contract No. 623-C-00-98-00029-00**

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I. CONTRACTOR'S REPORT

A. NARRATIVE

1. Background and Expected Results

Please refer to the Second Annual Report, Section I, which provides descriptions of the background of this contract, USAID/Madagascar's Strategic Objectives (SOs), and the Special Program Objective (SPO) *Improved Environment for Private Initiative*, under which the ARD/Checchi contract falls. This report also details the Mission's two Intermediate Results (IRs), five Sub-Intermediate Results (Sub-IRs), and the relationship of the contract to those results.

2. Tenth Quarter Activities

a. Contract Modifications

ARD/Checchi and USAID/Madagascar completed negotiations on and signed minor contract modifications. Contract Modification No. 5, dated November 14, 2000: decreased the LOE for CLIN 2001-2 from 600 days to 560 days, thereby reducing the total contract LOE from 1,650 days to 1,610 days; created a new CLIN 0002-14 to cover the cost of a subcontract with MCI for the services of Raphaël Jakoba, at no change in the total value of the contract due to the reduction in LOE; and added \$2,431 in a new CLIN 0002-13 and to the value of the contract to cover the cost of translating French texts of draft reformed business laws into Malagasy. Contract Modification No. 6, dated December 18, 2000: made a number of adjustments to both Labor and Other Direct Cost CLINs to match CLIN contract amounts with the expenditures forecast in the approved Final Work Plan; the total value of the contract is unchanged.

b. Creation of a Word-Searchable CD-ROM Compilation of Malagasy Laws

In the previous Quarterly Report (July-September 2000), ARD/Checchi noted that our international legal information systems expert, Pierre Babinsky, began his assignment to create a word-searchable CD-ROM compilation of Malagasy laws. During that quarter, Mr. Babinsky received a copy of the non-searchable CD-ROM compilation prepared by USAID/Madagascar, analyzed the technical requirements for converting it into a word-searchable database, investigated possible search engines, and recommended the use of Adobe Acrobat, to be used in conjunction with Adobe Acrobat Reader. USAID and the Ministry of Justice approved this recommendation. Mr. Babinsky then converted the documents made available by USAID to Acrobat format (PDF). Mr. Babinsky also provided the Project Manager with technical guidance on including additional laws (i.e., laws not contained in the USAID compilation), the production and distribution of the master version of the word-searchable CD-ROM, and the promotion of the use and sale of the CD-ROM.

Mr. Babinsky completed his assignment during the Tenth Quarter, making two trips to Madagascar (October 9-28 and December 1-16), as well as working on the database at his home

in Montreal. In his first trip, Mr. Babinsky authenticated his choice of Adobe Acrobat for the search and retrieval engine, worked with the Ministry of Justice and other Malagasy entities in defining the contents of the CD-ROM (the laws should be contained and the verified versions of those laws), and negotiated preliminary arrangements for the production and distribution of the CD-ROM when completed.

In his second trip, Mr. Babinsky again verified the CD-ROM with the Ministry of Justice and USAID, and worked further on the definition of the contents of it. He provided instruction and orientation on the use of the CD-ROM to the Ministry of Justice, the University of Antananarivo Law School, and other select government and private sector legal audiences. Mr. Babinsky also completed arrangements for producing 1,000 copies of the CD-ROM, for delivering 350 of these copies to Ministry of Justice-designated government organizations and officials, and for offering the remaining 650 copies for sale to the public. He assisted the Project Manager in drafting a marketing strategy for presentation to and approval by USAID, and in drafting separate implementing contracts with the private firms selected to produce and market the CD-ROMs. Mr. Babinsky also organized a reception hosted by the Minister of Justice, and attended by the Mission Director, to mark the creation and imminent release of the CD-ROM.

Despite the best efforts of ARD/Checchi, the actual release of the CD-ROM did not take place until February 1, 2001. The major, and unforeseen stumbling block was in reaching a final definition of the contents of the CD-ROM. The Project Manager and Mr. Babinsky started working on this issue in September 2000, setting numerous deadlines for our Malagasy counterparts and then moving them back. Mr. Babinsky did not receive the final texts until mid-January, and a 10-day shipping delay accounted for the rest of the slippage.

c. Project Manager Visit

Project Manager Thomas R. Reynders visited Madagascar from September 15 through October 4. A full accounting of his activities, including those that took place in October, is contained in the Ninth Quarterly Report.

d. Arbitration and Mediation Centre of Madagascar

Based on the grant application prepared by the *Centre d'Arbitrage et de Médiation de Madagascar* (CAMM), ARD/Checchi submitted a \$50,000 grant proposal to USAID. The purpose of the proposed grant is to meet the CAMM's operating expenses in its first year. Following negotiations, USAID approved the proposal on December 13, 2000, and the first tranche of the grant, amounting to \$25,000 to cover startup costs as well as normal operating expenses, was dispatched in January 2001.

e. Milestone Completion

The following table shows those milestone activities under the Final Work Plan that were commenced and/or completed during the Ninth Quarter (July 1-September 30, 2000):

Business Law Reform

1.3.05 Creation of a Word-Searchable CD-ROM Compilation of Malagasy Laws (completed in Eleventh Quarter)

1.3.06 Ninth Quarterly Report

ADR

2.3.04 Completion and Administration of USAID Grant to CAMM (administration ongoing)

2.3.05 Ninth Quarterly Report

3. Levels of Effort Provided per CLIN

a. Tenth Quarter

CLIN #	Max Days	SOW/ Work Order	Description of Work Order	Consultant Name	# of Days
0001-1 U.S.-Legal Reform	435	25	Legal Information Systems Specialist	Pierre Babinsky (Checchi)	56.0
		26	Grants Management Compliance Specialist	Jason Zeno (ARD)	.63
		26	Management Support Advisor	Thomas Reynders (Checchi)	5.375
		27	Law Development Advisor/Project Manager	Thomas Reynders (Checchi)	2.0
0001-2 Local Legal Reform	600	29	Local Advisor (Creation of CD-Rom)	Louis Rajaonera	8.0
		29	Local Advisor (Creation of CD-Rom)	Ratiaray Ramarolanto	2.0
		29	Local Advisor (Creation of CD-Rom)	Elisa Razafiniarivo	4.0
0001-3 US ADR	290				
0001-4 Local ADR	200	21	Local Law Development Advisor	Elisa Razafiniarivo	51.0
		21	Local Law Development Advisor	Mboara Andriarimanana	51.0*
		23	Local Law Development Advisor	Raphaël Jakoba	5.0**
0001-5 Local Management	125				

* Please note that the information provided under Quarterly Report no. 7 is hereby being corrected. 25 days under SOW 21 were incurred by Louis Rajaonera only (instead of 30). SOW No. 21 has since been amended to include a grand total of 132 days. 127 days have been billed to date.

** Under Purchase Order, not included in cumulative LOE

b. Cumulative to Date (Quarters One through Nine)

CLIN #	Maximum Days	Cumulative Days
0001-1: U.S. Legal Reform	503	470.375
0001-2: Local Legal Reform	505	353.75
0001-3: U.S. ADR	301	247.675
0001-4: Local ADR	171	194.25
0001-5: Local Management	31	12.00
Totals	1511	1278.05
International Experts	804	718.05
Local Experts	707	560.00

These totals include the figures in the previous table; some LOE figures are estimates according to the relevant scopes of work.

4. Legislation Monitoring and Tracking Tables

a. Status, Critical Dates and Events of Legislation Reviewed by ARD/Checchi

	Law/Regulation Name- English/French	Drafting / Comment	CRDA / Other	Further Comment	NA Adoption	Official Publication
1	Arbitration Law / <i>Loi sur l'arbitrage</i>	8/98	9/98		11/11/98	12/21/98
2	Company Law / <i>Loi sur les sociétés commerciales</i>	9/98	2/01 Adopted by Council of Ministers			
3	Tradesman's Law / <i>Loi sur le statut du commerçant</i>	8/98	9/98		8/2/99	8/16/99
4	Competition Law / <i>Loi sur la concurrence</i>	8/98	9/98			
5	Transparency Law / <i>Loi sur la transparence des entreprises</i>	8/98	9/98		8/19/99	8/30/99
6	Legal Notice for Real Property Mortgages Law / <i>Loi sur l'hypothèque judiciaire provisoire</i>	8/98	9/98		8/19/99	8/30/99
7	Commercial Registry Decree / <i>Décret sur le registre du commerce et des sociétés</i>	8/98	9/98			1/3/00
8	Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i>	4/99	10/00 Sent to Council of Government	2/00-4/00		
9	Labor Code / <i>Code du travail</i>	6/99	*	9/99-10/99 3/00		
10	Leasing Law / <i>Loi sur le crédit bail</i>	2/00-4/00	Returned to Ministry of Finance			
11	Secured Transactions / <i>Loi sur les sûretés</i>	9/00	Still with CRDA			

* CNE drafting effort suspended

b. Business Law Reforms and ARD/Checchi/JURECO Contributions

The following table describes the significance to the overall business law reform effort in Madagascar of the reformed laws and decrees on which we have provided commentary, along with an analysis of the extent to which the final versions or drafts of those laws and decrees utilized our recommendations. The evolution of legal and regulatory reform is often difficult to quantify, with the final product frequently containing contributions of many persons who have written and spoken (both formally at meetings of Law Reform Commissions, and informally with drafters and policy-makers at various levels) about the subject undergoing reform. This table has been reviewed by both international and local specialists familiar with the reform process and reflects what they consider an accurate statement of the significant effort made by the ARD/Checchi/JURECO specialists.

Law/Regulation Name- English/French	Purpose	Status	ARD/Checchi Activities
Arbitration Law / <i>Loi sur l'arbitrage</i>	Establishes legal framework for arbitration	Adopted and promulgated	Extensive commentary provided, notably on using key UNCITRAL model law principles for international arbitration, including: minimum intervention by judiciary; right of parties to select arbiters; mandatory nature of Arbitral Award. The ARD/Checchi/JURECO contributions had been discussed with proponents of the final version of the law.
Company Code/ <i>Loi sur les sociétés commerciales</i> (including General Partnership Law, Limited Partnership Law, Limited Liability Company Law and Corporations Law)	Defines the legal forms of business enterprises	CRDA completed drafting process, draft text under review by Primature	Extensive commentary provided, notably on forms of business enterprises, including the benefit of the one-person corporation. Also suggested removal of requirement that ALL incorporators be required to be residents of Madagascar, and insertion of more extensive Corporate Governance principles. Suggested reference to separate proxy rules for larger enterprises in order to assure informed shareholder input.
Tradesman's Law / <i>Statut du commerçant</i>	Defines what a business is and who may engage in business	Adopted and promulgated	Commentary on inclusion of foreign businesses and technical aspects of draft. Articles 3.1 to 3.7 (dealing with accounting requirements that will clarify and help unify local standards) contributed by ARD/Checchi /JURECO team.
Competition Law / <i>Loi sur la concurrence</i>	Defines fair and unfair competition practices	CRDA action completed but blocked by Ministry of Commerce	Extensive commentary aimed at liberalizing and increasing specificity.
Transparency Law / <i>Loi sur la transparence des entreprises</i>	Specifies the kinds of information that a business make available to the public	Adopted and promulgated	Article 5.4 (on the ability of a sole proprietor to become a part of the registry—and therefore of organized business--) contributed by ARD/Checchi/JURECO team..
Decree on Legal Notice for Personal Property Mortgages / <i>Décret sur la Publicité du Crédit Mobilier</i>	Provides for public notice of liens on the personal property of business enterprises	Adopted and promulgated	Article 20 (dealing with creating a means of assuring that registrations are kept up-to-date and reviewable, thus making the registry more of a practical tool for the business community, rather than a formal procedure) contributed by ARD/Checchi/JURECO team.

Law/Regulation Name- English/French	Purpose	Status	ARD/Checchi Activities
Commercial Registry Decree <i>/ Décret sur le registre du commerce et des sociétés</i>	Establishes commercial register for assuring public notice of on-going acts of business enterprises, including registration of security interests and Credit-Bail transactions.	In force after being published in Official Gazette	Suggestions regarding structure and organization that reinforce the principles suggested by the ARD/Checchi/JURECO team in the related laws and decrees (on Transparency and on Credit Mobiliere--see above): in Articles 5, 28, 58, 59 and 60 there are now provisions on sole proprietors on-going registration requirements, as well as several other requirements to keep the registry up-to-date).
Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i>	Establishes legal framework for commercial enterprises to declare bankruptcy	Action completed by CRDA; under review by Primature	General guidance provided on theory and best international practices. ARD/Checchi now providing further technical assistance during the drafting process.
Labor Code / <i>Code du travail</i>	Provides comprehensive framework for labor/management relations	Being drafted by Conseil National de l'Emploi	Extensive technical assistance provided on theory and best international practices. International Labor Law Expert n assisted in preparation of most recent draft. ARD/Checchi/JURECO Labor Mediation specialist contributed several key draft provisions to dispute-resolution portion of the draft that may, if adopted, strengthen the ability of labor mediators to resolve disputes.
Draft Law on Finance Leasing / <i>Projet de loi sur crédit-bail</i>	Improves Legal Framework for Finance Leasing	Action completed by CRDA; under review by Primature and concerned Ministries	General guidance provided on theory and best international practices. ARD/Checchi now providing further technical assistance during the drafting process.
Draft Law on Secured Transactions / <i>Projet de loi sur les sûretés</i>	Facilitates access to credit through a clear and flexible legal mechanism	Under review by CRDA	Recommendations provide framework for meeting international standards for secured transactions law; consolidation and simplification of the rules makes them more understandable to domestic and foreign users and should provide easier access to credit and related commercial activities.

B. FINANCIAL

Contract Value	\$ 1,614,939.00
Expenditures to Date	\$ 1,066,319.20
Expenditures in 10 th Quarter	\$ 84,866.29

II. CTO'S COMMENTS

III. CO'S COMMENTS